United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD

COURT OF APPEALS, DISTRICT OF COLUMBIA

APRIL TERM, 1932

No. 5794

SPECIAL CALENDAR

270

ROCCO PELICARO, APPELLANT

vs.

UNITED STATES

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED SEPTEMBER 26, 1932

LIBRARY
THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

COURT OF APPEALS, DISTRICT OF COLUMBIA

APRIL TERM, 1932

No. 5794

ROCCO PELICARO, APPELLANT

vs.

UNITED STATES, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Caption	a	1
Indictment	1	1
Endorsement	2	2
Memorandus: Plea not guilty withdrawn; plea guilty entered	2	2
Sentence, &c	2	2
Certificate of probation officer and probationer	4	2
Indictment (No. 51638)	5	3
Endorsement	36	17
Memorandum as to trial	39	18
Verdict	39	18
Sentences	40	19
Revocation of sentence in cause No. 49843	42	20
Motion for hearing (or rehearing)	42	20
Notice and service	43	20
Motion for hearing (or rehearing) overruled and exception prayed and allowed	43	20
Appeal noted and bond for costs fixed	44	21
Order allowing appeal in forma pauperis	44	21
Assignment of errors	44	21
Service acknowledged	46	22
Designation of record and service acknowledged	46	22
Appellee's additional designation of record	47	22
Note of mailing copy of designation of record	48	23
Clerk's certificate	49	24

SUPREME COURT OF THE DISTRICT OF COLUMBIA

Criminal No. 49843

UNITED STATES

vs.

ROCCO PELICARO

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Indictment*

Filed in open court Sept. 30, 1930

In the Supreme Court of the District of Columbia

Holding a Criminal Term

July Term, A. D. 1930

District of Columbia, ss:

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one Rocco Pelicaro, late of the District of Columbia aforesaid, on, to wit, the eighteenth day of July, 1930, and at the District of Columbia aforesaid, feloniously and unlawfully did manufacture a certain intoxicating liquor, to wit, whiskey, containing one-half of one per centum and more of alcohol by volume, the said liquor so manufactured as aforesaid being then and there fit for use for beverage purposes, against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

Second count

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Rocco Pelicaro, on, to wit, the eighteenth day of July, 1930, and at the District of Columbia aforesaid, unlawfully did possess a certain intoxicating liquor, to wit, whiskey, containing one-half of one per centum and more of alcohol by volume, the said liquor so possessed as aforesaid being then and there fit for use for beverage purposes, against the form of the statute in such case

2 made and provided, and against the peace and Government of the said United States.

LEO A. ROVER,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) Criminal No. 49843. United States vs. Rocco Pelicaro, vio. national prohibition act. Witnesses: Ernest C. O'Meara, M. P.; Oscar J. Letterman, M. P. A true bill: C. Ernest Colliflower, jr., foreman.

Memorandum

October 21, 1930: Plea not guilty withdrawn. Plea guilty entered.

Supreme Court of the District of Columbia

SATURDAY, OCTOBER 25, A. D. 1930.

The court resumes its session pursuant to adjournment: Mr. Justice Gordon, presiding.

* * * * * * *

Come as well the attorney of the United States, as the defendant in proper person, according to his recognizance and by his attorney James B. Archer, Esquire; whereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said; and thereupon it is considered by the court that for his said offense, the said defendant be imprisoned in the penitentiary, as designated by the Attorney General of the United States, for the period of four (4) years on the first count of
3 the indictment and pay a fine of one hundred dollars ($100) on the second count of the indictment, said counts to run concurrently and to take effect from and including the date of arrival of said defendant at said penitentiary, whereupon it is considered by the court that the execution of the sentence be and is hereby suspended, and the said defendant be and is hereby placed on probation in charge of the probation officer of the court; and thereupon the defendant enters into a recognizance in the sum of one hundred dollars, to surrender himself forthwith, when required, to the marshal of the district, to begin the service of said sentence and not to depart the court without leave.

4 Filed September 16, 1932

In the Supreme Court of the District of Columbia

Holding a Criminal Court. Criminal No.—

Under authority of the act of Congress, approved June 25, 1910, entitled "An act for the establishment of a probation system for the District of Columbia," it is ordered and adjudged that Rocco Pelicaro convicted on the 21st day of October, A. D. 1930, of the offense

of vio. national prohibition act and sentenced to imprisonment in the penitentiary for the term of four years; fine $100; and it appearing to the satisfaction of the court that the ends of justice and the best interests of the public as well as of the defendant would be subserved thereby, the execution of the sentence and fine is hereby suspended and the defendant is placed on probation in charge of the probation officer of this court for the period of four years upon the following terms and conditions, viz:

That he will not repeat the offense, or otherwise violate the law.

That he will diligently pursue some lawful employment.

That he will be of good behavior and keep the peace towards all persons.

That he will report to the probation officer once a month for four years.

Witness the honorable the chief justice and associate justices of said court and the seal of said court this 25th day of October, A. D. 1930.

[SEAL.] FRANK E. CUNNINGHAM, *Clerk.*
By JAMES F. HOWELL, *Asst. Clerk.*

Certificate of Probationer

The clerk of the court having provided me with a written statement of the above terms and conditions, I hereby agree to abide by them and to be placed on probation.

(Signed) ROCCO PELLICANO,
ROCCO PELICARO, *Probationer.*

Witness: AMOS A. STEELE, *Probation Officer.*
Per G. VAN RIPER.

5 *Indictment*

Filed in Open Court Dec. 3, 1931

In the Supreme Court of the District of Columbia

Holding a criminal term

October term, A. D. 1931

District of Columbia, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia, impaneled and sworn in the Supreme Court of the District of Columbia, at the October term of said court, in the year 1931, and inquiring for said District of Columbia, upon their oath do present:

That one Harry Zimberg, otherwise known as Jack Zimberg, otherwise known as Harry Zinberg, otherwise known as Jack Brown, and hereinafter in this indictment designated and called Harry Zimberg; one Abraham Zimberg, otherwise known as Abe Zimberg, otherwise known as Abraham Zinberg, and hereinafter in this indictment designated and called Abraham Zimberg; one Joseph Zimberg, otherwise known as Joe Zimberg, otherwise known as Joseph Zin-

berg, otherwise known as Joseph Gary, otherwise known as Joe Gary, and hereinafter in this indictment designated and called Joseph Zimberg; one Solomon Zimber, otherwise known as Sol Zimberg, otherwise known as Sol Zinberg, otherwise known as Sol Gary, and hereinafter in this indictment designated and called Solomon Zimberg; one Adolph Rudy Moder, otherwise known as Rudy Moder, otherwise known as Adolph Moder, otherwise known as Rudolph Moder, otherwise known as M. Rudolph, and hereinafter in this indictment designated and called Adolph Rudy
6 Moder; one Frederick Spasaro, otherwise known as Fred Spasaro, otherwise known as Fred Sparsaro, otherwise known as Fred Spasaco, and hereinafter in this indictment designated and called Frederick Spasaro; one Charles Everett Mills, otherwise known as Eddie Mills, and hereinafter in this indictment designated and called Charles Everett Mills; one John Giovinazzo, otherwise known as John Giouvazzo, and hereinafter in this indictment designated and called John Giovinazzo; one Helen Zimberg, otherwise known as Helen Zinberg, otherwise known as Helen Gary, and hereinafter in this indictment designated and called Helen Zimberg; one Bernice Zimberg, otherwise known as Bernice Zinberg, otherwise known as Bernice Hearly, and hereinafter in this indictment designated and called Bernice Zimberg; one Maurice Chipiwalt, otherwise known as Maurice Chipiwelt, otherwise known as Maurice Chitiwalt, and hereinafter in this indictment designated and called Maurice Chipiwalt; one Thomas Michael Crane, otherwise known as Thomas Crane, and hereinafter in this indictment designated and called Thomas Michael Crane; one Nick Macchiarella; one Rocco Pellicano, otherwise known as Rocca Pelicano, otherwise known as Rocca Pelicona, and hereinafter in this indictment designated and called Rocco Pellicano; one Antenntta Pellicano, otherwise known as Antenetta Pelicano, otherwise known as Antenetta Pelicona, and hereinafter in this indictment designated and called Antenntta Pellicano; one Frank Maida; one Michael Spinell, otherwise known
7 as Michael Spinill, otherwise known Mike Spinill, and hereinafter in this indictment designated and called Michael Spinell; one Angelo Schiattareggia, otherwise known as Angelo Schiottoriggio, and hereinafter in this indictment designated and called Angelo Schiattareggia; one Malcolm Scott McGehee, otherwise known as Malcolm Scott McGhee, and hereinafter in this indictment designated and called Malcolm Scott McGehee; one Bruno Cristarello, otherwise known as Bruno Cristerila, otherwise known as Bruno Crispalroo, otherwise known as Nick Bruno, and hereinafter in this indictment designated and called Bruno Cristarello; one Domenic J. Musolino, otherwise known as Dominic J. Musolino, otherwise known as Dominic Muscolino, and hereinafter in this indictment designated and called Domenic J. Musolino; one Rose Caparrotta, otherwise known as Rosie Caparrotta, otherwise known as Rose Palmer, and hereinafter in this indictment designated and called Rose Caparrotta; one James Palmer Caparrotta, otherwise known as James Caparrott, otherwise known as James Palmer, and hereinafter in this indictment designated and called James Palmer Caparrotta; one James Richard Posey, otherwise known as Dominic Caparrotta, otherwise known as Domenick Caparrotta, otherwise

known as Nick, and hereinafter in this indictment designated and called James Richard Posey; one Gus LeVigne, otherwise known as Gus Levigne, otherwise known as Gus Levine, and hereinafter in this indictment designated and called Gus LeVigne;
8 one Wesley Williams, otherwise known as Leslie Williams, and hereinafter in this indictment designated and called Wesley Williams; one John Thomas Traynor, otherwise known as John Traynor, otherwise known as Thomas J. Traynor, otherwise known as Reds Traynor, otherwise known as John Hearly, otherwise known as Reds Hearly, and hereinafter in this indictment designated and called John Thomas Traynor; one Louis Specter, otherwise known as Louis Katz, otherwise known as Henry Katz, otherwise known as Ben Myers, otherwise known as Benjamin Myers, otherwise known as Ben Herman, and hereinafter in this indictment designated and called Louis Specter; one Samuel Aaron Specter, otherwise known as Henry Katz, otherwise known as Harry Katz, and hereinafter in this indictment designated and called Samuel Aaron Specter; one Joseph Andrews; one Addie Skari; one Ragnar Skari, otherwise known as Rags Skari, and hereinafter in this indictment designated and called Ragnar Skari; one Charles Carlo Maggio; one Joseph Maimone, otherwise known as Joseph Manoi, and hereinafter in this indictment designated and called Joseph Maimone; one Ellis Lee Morris, otherwise known as Ellis Lee Marsh, and hereinafter in this indictment designated and called Ellis Lee Morris; and one Louise Zimberg, each late of the District of Columbia aforesaid, all of said persons above named being hereinafter in this indictment designated and
9 called defendants, continuously throughout the period of time extending from the first day of January, in the year of our Lord one thousand nine hundred and twenty-nine, to the day of the finding and presentation of this indictment, in and at the city of Washington, in said District of Columbia, feloniously and unlawfully did conspire, combine, confederate, and agree together, and each with the other, and with one Arthur Dean Daniel, being the younger of that name, and hereinafter in this indictment designated and called Arthur Dean Daniel, junior, and with one Edward T. Crismond, each late of said District of Columbia, which said latter two persons, because of the fact that they have testified before the said grand jurors with respect to the matters and things in this indictment set forth, are not herein indicted, and with divers other persons to the grand jurors aforesaid unknown, to commit, during the said period of time, a large number of offenses against the United States, to wit, a large number of offenses against the United States each to consist in an unlawful violation of the national prohibition act, being volume 41, United States Statutes at Large, chapter 85, page 305, and being also title 27 of the Code of the laws of the United States of America, and hereinafter in this indictment designated and called the national prohibition act; that is to say, three hundred of said offenses against the United States, each to consist in the said defendants, at
10 said District of Columbia, unlawfully and knowingly manufacturing at divers places in said District of Columbia, one of said last-mentioned places being the premises numbered and designated 88 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered

and designated 1104 K Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 609 A Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 211 Fifteenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 2010 R Street Northwest, in the said District of Columbia; another of said last-mentioned places being the premises numbered and designated 512 G Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 513 M Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1040 Bladensburg Road Northeast, in said District of Columbia, and at divers other places in said District of Columbia, the exact location of which said other places is to the said grand jurors unknown, large quantities, the exact quantities being to said grand jurors unknown of intoxicating liquor, to wit, alcohol, brandy,
11 whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, otherwise than as authorized by said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; and three hundred of said offenses against the United States, each to consist in the said defendants, at said District of Columbia, unlawfully and knowingly possessing, at divers places in the said District of Columbia, one of said last-mentioned places being the premises numbered and designated 211 C Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1616 East Capitol Street, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 487 Maryland Avenue Southwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 200 L Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1142 Fifth Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1321 Pennsylvania Avenue Southeast, in said District of Columbia; another of said last-mentioned places
12 being the premises numbered and designated 88 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1104 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 609 A Street Southeast in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 318 Tenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 620 L Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 231 Fourteenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered

and designated 236 Second Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 142 Carroll Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 235 Fourteenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 211 Fifteenth Street Southeast, in the said District of Columbia; another of said last-mentioned places being the premises numbered and designated
513 M Street Northeast, in said District of Columbia; another
13 of said last-mentioned places being the premises numbered
and designated 2010 R. Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 608 I Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 512 G Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1111 C Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 19 Eighth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1123 C Street Southeast, in said District of Columbia; and at divers other places in said District of Columbia, the exact location of which said other places is to the said grand jurors unknown, large quantities, the exact quantities being to said grand jurors unknown, of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer and divers other kinds of intoxicating liquor, the exact kinds being to the said grand jurors unknown, otherwise than as authorized by said national prohibition act, all contrary to and in violation of said national prohibition act, all of said acts being then and there prohibited and made unlawful by said national prohibition act; and three hundred of said offenses against the United States, each to consist in the said
defendants, at said District of Columbia, unlawfully
14 and knowingly transporting, from divers places in said District of Columbia, one of said last-mentioned places being the premises numbered and designated 1616 East Capitol Street, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1142 Fifth Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 88 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1104 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1321 Pennsylvania Avenue Southeast, in said District of Columbia; and from divers other places in said District of Columbia, the exact location of which said other places is to the said grand jurors unknown, large quantities, the exact quantities being to said grand jurors unknown, of intoxicating liquor, to wit, alcohol, brandy, whisky, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, otherwise than as authorized by said

national prohibition act, to divers places in said District of Columbia, one of said last-mentioned places being the premises numbered and designated 200 L Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1321 Pennsylvania Avenue Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1142 Fifth Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1616 East Capitol Street, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 419 Third Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 231 Fourteenth Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 2128 Pennsylvania Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 3361 Military Road Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 111½ G Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 142 Carroll Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 513 M Street Northeast, in said District of Columbia; and to divers other places within said District of Columbia, the exact location of which other places is to the said grand jurors unknown, all contrary to and in violation of said national prohibition act, all of said acts being then and there prohibited and made unlawful by said national prohibition act; and three hundred of said offenses against the United States, each to consist in the said defendants, at said District of Columbia, unlawfully and knowingly selling, at divers places in said District of Columbia, one of said last-mentioned places being the premises numbered and designated 211 C Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 200 L Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 419 Third Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 3361 Military Road Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 318 Tenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 620 L Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 235 Fourteenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 513 M Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 236 Second Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 142

Carroll Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1111 C Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 19 Eighth Street Southeast, in said District of Columbia; and at divers other places in said District of Columbia, the exact location of which said other places is to the said grand jurors unknown, large quantities, the exact quantities being to said grand jurors unknown, of intoxicating liquor, to wit, alcohol, brandy, whisky, gin, and beer, and divers other kinds of intoxicating liquor, the exact kinds being to the said grand jurors unknown, otherwise than as authorized by said national prohibition act, all contrary to and in violation of the said national prohibition act, all of said acts being then and there prohibited and made unlawful by said national prohibition act; and three hundred of said offenses against the United States, each to consist in the said defend-
18 ants, at said District of Columbia, unlawfully and knowingly having and possessing, at divers places, in said District of Columbia, one of said last-mentioned places being the premises numbered and designated 88 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1104 K Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 609 A Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 218 Ninth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 512 G Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 513 M Street Northeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 2010 R Street Northwest, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 211 Fifteenth Street Southeast, in said District of Columbia; another of said last-mentioned places being the premises numbered and designated 1040 Bladensburg Road Northeast, in said District of Columbia, and at divers other places in said District of Columbia, the exact location of which said other places is to the said grand jurors unknown, large quantities, the exact quantities
19 being to said grand jurors unknown, of property, to wit, sugar, dried peaches, fruit jars, stills, coils, worms, condensers, coloring matter, liquor testers, measuring cans, barrels, boxes, cartons, mash, funnels, hose, and divers other property, articles, and things, the exact kind and nature of which other property, articles, and things being to the said grand jurors unknown, all of which said property, articles, and things above described being then and there designed for, and by said defendants intended to be used by said defendants for, the manufacture of intoxicating liquor intended for use in violating the provisions of Title II of said national prohibition act, and all contrary to and in violation of said national prohibition act, all of said acts being then and there prohibited and made unlawful by said national prohibition act; and another of said offenses

against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 88 K Street Northeast, in said District of Columbia, a room, a house, a building, a structure and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whisky, gin, and beer, and divers other kinds of intoxicating liquor, the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II
20 of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 1104 K Street Northeast, in said District of Columbia, a room, a house, a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 1616 East Capitol Street, in said District of Columbia, a room, a house, a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin,
21 and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 200 L Street Northwest, in said District of Columbia, a room, a house, a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 1142 Fifth

Street Northeast, in said District of Columbia, a room, a house,
22 a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured, and kept by the said defendants, and sold by them, in violation of the provisions of said Title II of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 318 Tenth Street Southeast, in said District of Columbia, a room, a house, a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II, of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants,
23 at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 620 L Street Southeast, in said District of Columbia, a room, a house, a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II, of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 609 A Street Southeast, in said District of Columbia, a room, a house, a building, a structure and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II, of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited
24 and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 236 Second Street Northeast, in said District of Columbia, a room, a house, a building, a structure, and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer,

and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II, of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 211 C Street Southeast, in said District of Columbia, a room, a house, a building, a structure and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin, and beer, and divers other kinds of intoxicating liquor the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold
25 by them, in violation of the provisions of said Title II, of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act; another of said offenses against the United States to consist in the said defendants, at said District of Columbia, unlawfully maintaining at the said premises numbered and designated 512 G Street Northeast, in said District of Columbia, a room, a house, a building, a structure and a place wherein and whereat large quantities of intoxicating liquor, to wit, alcohol, brandy, whiskey, gin and beer, and divers other kinds of intoxicating liquor, the exact kinds being to the said grand jurors unknown, were to be manufactured and kept by the said defendants, and sold by them, in violation of the provisions of said Title II, of said national prohibition act, all contrary to and in violation of said national prohibition act, and all of said acts being then and there prohibited and made unlawful by said national prohibition act.

26 *Overt acts*

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said defendants, at the several times and at the several places in that behalf hereinafter mentioned in connection with their names, in furtherance of said unlawful and felonious conspiracy, combination, confederation, and agreement herein set out and described, and to effect the object of the said conspiracy, combination, confederation, and agreement, did do and commit, among many others, the several acts hereinafter specified, that is to say:

1. That the said defendants, Bernice Zimberg and John Thomas Traynor and Abraham Zimberg, on or about August 10, 1929, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at said premises No. 211 C Street Northeast, in said District of Columbia, two pots, more or less, of intoxicating liquor.

2. That the said defendants, Louis Specter and Abraham Zimberg, on or about June 5, 1930, at and in said District of Columbia, and during the time said conspiracy existed, transported in a certain

automobile, from a place to said grand jurors unknown, to a point on Third Street Northeast, near G Street, Northeast, in said District of Columbia, two hundred and three bottles, more or less, of intoxicating liquor.

27 3. That the said defendant, Solomon Zimberg, on or about October 4, 1930, at and in said District of Columbia, and during the time said conspiracy existed, leased and hired the said premises number 318 Tenth Street Southeast, in said District of Columbia.

4. That the said defendants, Thomas Michael Crane and Maurice Chipiwalt, on or about December 19, 1930, at and in the said District of Columbia, and during the time said conspiracy existed, transported, in a certain automobile, thirty gallons, more or less, of intoxicating liquor, from a place to the said grand jurors unknown, to the said premises 1616 East Capitol Street, in said District of Columbia.

5. That the said defendants, Samuel Aaron Specter and Joseph Maimone, on or about December 23, 1930, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises No. 608 I Street Southeast, in said District of Columbia, five gallons, more or less, of intoxicating liquor.

6. That the said defendant, Harry Zimberg, on or about February 4, 1931, at and in said district of Columbia, and during the time said conspiracy existed, possessed, at said premises No. 1616 East Capitol Street, in said District of Columbia, seventeen one-half gallons, more or less of intoxicating liquor.

28 7. That the said defendant, Ragnar Skari, on or about March 8, 1931, at and in said District of Columbia, and during the time the said conspiracy existed, leased and hired the said premises number 487 Maryland Avenue Southwest, in said District of Columbia.

8. That the said defendants, Addie Skari and Abraham Zimberg, on or about March 14, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises number 487 Maryland Avenue Southwest, in said District of Columbia, two one-half gallons, more or less, and one hundred and ninety-two bottles, more or less of intoxicating liquor.

9. That the said defendant, Adolph Rudy Moder, on or about March 26, 1931, at and in the said District of Columbia, and during the time said conspiracy existed, transported, in a certain automobile, from a place to the said grand jurors unknown, to the said premises number 1616 East Capitol Street, in said District of Columbia, twenty-eight one-half gallons, more or less, of intoxicating liquor.

10. That the said defendants, Abraham Zimberg and Adolph Rudy Moder, on or about March 28, 1931, at and in the said District of Columbia, and during the time said conspiracy existed, possessed and transported, in a certain automobile, from the said premises 1616 East Capitol Street, in said District of Columbia, to

29 a point on Thirteenth Street Southeast, between D and E Streets, in said District of Columbia, eighteen one-half gallons, more or less, of intoxicating liquor.

11. That the said defendants, John Giovinazzo and Nick Macchiarella and Rocco Pellicano, on or about March 28, 1931, at and in said

district of Columbia, and during the time said conspiracy existed, transported, in a certain automobile, from the said premises 1616 East Capitol Street, in said District of Columbia, to a point on South Carolina Avenue, Southeast, between Twelfth and Thirteenth Streets, in said District of Columbia, two one-half gallons, more or less, of intoxicating liquor.

12. That the said defendant, James Palmer Caparrotta, on or about April 13, 1931, at and in said District of Columbia, and during the time said conspiracy existed, purchased a certain automobile, and caused the same to be used by said defendant, Charles Everett Mills.

13. That the said defendant, Joseph Zimberg, on or about April 22, 1931, at and in said District of Columbia, and during the time said conspiracy existed, leased and hired the said premises number 1104 K Street Northeast, in said District of Columbia.

14. That the said defendants, Angele Schiattareggia, and Michael Spinell, and Frank Maida, on or about April 24, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises numbered 200 L Street
30 Northwest, in said District of Columbia, three one-half gallons, more or less, of intoxicating liquor.

15. That the said defendants, Charles Everett Mills, and Malcolm Scott McGehee, and Helen Zimberg and Joseph Zimberg, on or about May 15, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises 1142 Fifth Street Northeast, in said District of Columbia, sixty-one one-half gallons, more or less, of intoxicating liquor.

16. That the said defendant, Domenic J. Musolino, on or about May 18, 1931, at and in said District of Columbia, and during the time said conspiracy existed, transported from the said premises numbered 88 K Street Northeast, in said District of Columbia, twelve one-half gallons, more or less, of intoxicating liquor, to a point at or near the corner of Fifth and K Streets Northwest, in said District of Columbia.

17. That the said defendant, Harry Zimberg, on or about May 21, 1931, at and in said District of Columbia, and during the time said conspiracy existed, purchased a certain automobile and caused the same to be delivered to the said defendants, John Giovinazzo and Adolph Rudy Moder.

18. That the said defendant, Frederick Spasaro, on or about May 24, 1931, at and in said District of Columbia, and during the
31 time said conspiracy existed, transported, in a certain automobile, from the said premises numbered 88 K Street Northeast, in said District of Columbia, to the said premises numbered 111½ G Street Northwest, in said District of Columbia, twelve one-half gallons, more or less. of intoxicating liquor.

19. That the said defendants, Frederick Spasaro, and Bruno Cristarello, and John Giovinazzo, on or about May 30, 1931, at and in said District of Columbia, and during the time said conspiracy existed, manufactured and caused to be manufactured, one hundred and forty-four one-half gallons, more or less, of intoxicating liquor, and six hundred and seventy-six gallons, more or less, of mash, at the

said premises numbered 88 K Street Northeast, in said District of Columbia.

20. That the said defendants, Bruno Cristarello and Frederick Spasaro, on or about May 30, 1931, at and in said District of Columbia, and during the time said conspiracy existed, transported from the said premises numbered 88 K Street Northeast, in said District of Columbia, twenty-four one-half gallons, more or less, of intoxicating liquor, to the garage in the rear of said premises.

21. That the said defendants, Rocco Pellicano and Antenntta Pellicano, on or about June 16, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at
the said premises numbered 1321 Pennsylvania Avenue
32 Southeast, in said District of Columbia, one hundred and fourteen one-half gallons, more or less, of intoxicating liquor.

22. That the said defendant, Adolph Rudy Moder, on or about June 16, 1931, and and in said District of Columbia, and during the time said conspiracy existed, transported, from the said premises numbered 1104 K Street Northeast, in said District of Columbia, to the garage in the rear of said premises, seventy-two one-half gallons, more or less, of intoxicating liquor.

23. That the said defendant, James Richard Posey, on or about July 1, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises numbered 620 L Street Southeast, in said District of Columbia, five hundred and twenty-five bottles, more or less, of intoxicating liquor.

24. That the said defendants, Gus Le Vigne and Wesley Williams, on or about July 1, 1931, at and in said District of Columbia, and during the time said conspiracy existed, had and possessed, at the said premises numbered 513 M Street Northeast, in said District of Columbia, five hundred and fifty-seven bottles, more or less, of intoxicating liquor, and thirty gallons, more or less, of mash for the
manufacture of intoxicating liquor.

33 25. That said defendant, John Thomas Traynor, on or about July 21, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises number 142 Carroll Street Southeast, in said District of Columbia, fifteen quarts, more or less, of intoxicating liquor.

26. That the said defendant, Joseph Andrews, on or about July 23, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises number 620 L Street Southeast, in said District of Columbia, five quarts, more or less, of intoxicating liquor.

27. That the said defendants, Ellis Lee Morris and Gus Le Vigne, on or about July 25, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises number 513 M Street Northeast, in said District of Columbia, ten one-half gallons, more or less, and one hundred and twenty-five bottles, more or less, of intoxicating liquor.

28. That the said defendants, Rose Caparrotta and Joseph Andrews, on or about September 14, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises number 235 Fourteenth Street Southeast, in said

District of Columbia, three gallons, more or less, of intoxicating liquor.

34 29. That the said defendant, Charles Carlo Maggio, on or about September 25, 1931, at and in said District of Columbia, and during the time said conspiracy existed, had and possessed, at the said premises number 512 G Street Northeast, in said District of Columbia, a certain still and thirty-six one-half gallons, more or less, of intoxicating liquor, and two thousand gallons, more or less, of mash for the manufacture of intoxicating liquor.

30. That the said defendants, Louis Specter and Samuel Aaron Specter, on or about November 6, 1931, at and in said District of Columbia, and during the time said conspiracy existed, had and possessed, at the said premises number 2010 R Street Northwest, in said District of Columbia, a certain still and ten hundred and forty gallons, more or less, of mash for the manufacture of intoxicating liquor.

31. That the said defendants, Solomon Zimberg and James Richard Posey, on or about November 17, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises number 1111 C Street Southeast, in said District of Columbia, three one-half gallons, more or less, of intoxicating liquor.

32. That the said defendant, Louise Zimberg, on or about November 17, 1931, at and in said District of Columbia, and during the time said conspiracy existed, possessed, at the said premises numbered 19 Eighth Street Southeast, in said District of Columbia, one quart, more or less, of intoxicating liquor.

35

Conclusion

And so the grand jurors aforesaid, upon their oath aforesaid, do say:

That the said defendants hereinbefore named, throughout the period of time aforesaid, at the places and in the manner and form aforesaid, unlawfully and feloniously did conspire, combine, confederate and agree together, and with others, to commit offenses against the United States, and did do acts to effect the object of said conspiracy, combination, confederation and agreement, against the form of the statute in such case made and provided and against the peace and government of the United States.

LEO A. ROVER,
Attorney of the United States in and for
the District of Columbia.

36 *Grand jury original*

Criminal No. 51368

UNITED STATES

vs.

1. HARRY ZIMBERG, alias Jack Zimberg, alias Harry Zimberg, alias Jack Brown;
2. ARRAHAM ZIMBERG, alias Abe Zimberg, alias Abraham Zinberg;
3. JOSEPH ZIMBERG, alias Joe Zimberg, alias Joseph Zinberg, alias Joseph Gary, alias Joe Gary;
4. SOLOMON ZIMBERG, alias Sol Zimberg, alias Sol Zinberg, alias Sol Gary;
5. ADOLPH RUDY MODER, alias Rudy Moder, alias Adolph Moder, alias Rudolph Moder, alias M. Rudolph;
6. FREDERICK SPASARO, alias Fred Spasaro, alias Fred Sparsaro, alias Fred Spasaco;
7. CHARLES EVERETT MILLS, alias Eddie Mills;
8. JOHN GIOVINAZZO, alias John Giouvazzo;
9. HELEN ZIMBERG, alias Helen Zinberg, alias Helen Gary;
10. BERNICE ZIMBERG, alias Bernice Zinberg, alias Bernice Hearly;
11. MAURICE CHIPIWALT, alias Maurice Chipiwelt, alias Maurice Chitiwalt;
12. THOMAS MICHAEL CRANE, alias Thomas Crane;
13. NICK MACCHIAPELLA;
14. ROCCO PELLICANO, alias Rocca Pelicano, alias Rocca Pelicona;

37 15. ANTENNTTA PELICANO, alias Antenetta Pelicano, alias Antenetta Pelicona;

16. FRANK MAIDA;
17. MICHAEL SPINELL, alias Michael Spinill, alias Mike Spinill;
18. ANGELO SCHIATTAREGGIA, alias Angelo Schiottoriggio;
19. MALCOLM SCOTT MCGEHEE, alias Malcolm Scott McGhee;
20. BRUNO CRISTARELLO, alias Bruno Cristerila, alias Bruno Crispalroo, alias Nick Bruno;
21. DOMENIC J. MUSOLINO, alias Dominic J. Musolino, alias Dominic Muscolino;
22. ROSE CAPARROTTA, alias Rosie Caparrotta, alias Rose Palmer;
23. JAMES PALMER CAPARROTTA, alias James Caparrotta, alias James Palmer;
24. JAMES RICHARD POSEY, alias Dominic Caparrotta, alias Domenick Caparrotta, alias Nick;
25. GUS LE VIGNE, alias Gus Le Vigne, alias Gus Levine;
26. WESLEY WILLIAMS, alias Leslie Williams;
27. JOHN THOMAS TRAYNOR, alias John Traynor, alias Thomas J. Traynor, alias Reds Traynor, alias John Hearly, alias Reds Hearly;
28. LOUIS SPECTER, alias Louis Katz, alias Henry Katz, alias Ben Myers, alias Benjamin Myers, alias Ben Herman;

38 29. SAMUEL AARON SPECTER, alias Henry Katz, alias Harry Katz;
30. JOSEPH ANDREWS;
31. ADDIE SKARI;
32. RAGNAR SKARI, alias Rags Skari;
33. CHARLES CARLO MAGGIO;
34. JOSEPH MAIMONE, alias Joseph Manoi;
35. ELLIS LEE MORRIS, alias Ellis Lee Marsh;
36. LOUISE ZIMBERG.

Conspiracy to violate the national prohibition act. Section 37 of the United States Penal Code, being also section 88, chapter 4, title 18, United States Code

Witnesses: George M. Little, M. P.; George C. Deyoe, M. P.; Richard J. Felber, M. P.; Theodore O. Montgomery, M. P.; Arthur Dean Daniel, jr.; Edward T. Crismond; Albert W. Joyce; Herbert G. Wanamaker, M. P.; Nelson O. Holmes, M. P.; W. D. DeGroot, M. P.

A true bill:

THEODORE BENNETT GITTINGS,
Foreman.

39 *Memorandum*

March 14, 1932: Trial commenced before Justice F. Dickinson Letts, and jury respited from day to day to and including March 31, 1932.

Supreme Court of the District of Columbia

THURSDAY, MARCH 31″, A. D. 1932.

The court resumes its session pursuant to adjournment, Mr. Justice Letts presiding.

* * * * * * *

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon the said jury upon their oath say that the defendant Adolph Rudy Moder, the defendant Frederick Spasaro, the defendant Thomas Michael Crane, the defendant Rocco Pellicano, the defendant Antenntta Pellicano, the defendant Rose Caparrotta, the defendant James Palmer Caparrotta, and the defendant James Richard Posey are guilty in manner and form as charged in the indictment and the defendant Frank Maida, the defendant Michael Spinell, the defendant Angelo Schiattareggia, the defendant Bruno Cristarello, and the defendant John Thomas Traynor are not guilty; whereupon it is considered by the court that the defendant Frank Maida, the defendant Michael Spinell, the defendant Angelo Schiattareggia, the defendant Bruno Cristarello, and the defendant John Thomas Traynor go thereof without day and the other-named defendants be committed to the Washington Asylum and Jail.

40 Supreme Court of the District of Columbia

FRIDAY, APRIL 15, A. D. 1932.

The court resumes its session pursuant to adjournment, Mr. Justice Letts presiding.

* * * * * * *

Come as well the attorney of the United States, as the defendants in proper person, the defendants James Palmer Caparrotta, Rose Caparrotta, Antennetta Pellicano, Rocco Pellicano, and James Richard Posey, each in custody of the Superintendent of the Washington Asylum and Jail, and the defendants Thomas Michael Crane and Adolph Rudy Moder each according to his recognizance, and the defendants James Palmer Caparrotta, Rose Caparrotta, and Thomas Michael Crane by their attorney Joseph D. DiLeo, Esquire; the defendants Antennetta Pellicano and Rocco Pellicano by their attorney James B. Archer, Esquire; the defendant James Richard Posey, by his attorney Joseph D. DiLeo, Esquire; and the defendant Adolph Rudy Moder, by his attorney Jesse C. Duke, Esquire; and thereupon it is demanded of each defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said; whereupon it is considered by the court that for his said offense each of the said defendants be taken by the superintendent aforesaid to the said asylum and jail aforesaid, whence he came, thence to the penitentiary, as designated by the Attorney General of the United States, the defendant James Palmer Caparrotta there to be imprisoned for the period of two (2) years, the defendant Thomas Michael Crane there to be imprisoned for the period of fifteen (15) months, and the defendants Rocco Pellicano and James Richard Posey each
41 there to be imprisoned for the period of eighteen (18) months, to take effect from and including this date; and thereupon it is demanded of the defendants Rose Caparrotta and Antennetta Pellicano what further they have to say why the sentence of the law should not be pronounced against them, and they say nothing except as they have already said; whereupon it is considered by the court that for each of their said offenses, each defendant be imprisoned in the penitentiary, as designated by the Attorney General of the United States for the period of two (2) years, to take effect from and including the date of arrival of said defendants at said penitentiary; and thereupon it is considered by the court that the execution of the sentences be and are hereby suspended, and each of the said defendants be and is hereby placed on probation in charge of the probation officer of the court; whereupon each defendant enters into a recognizance in the sum of one hundred dollars, to surrender herself forthwith, when required, to the marshal of the District, to begin the service of said sentence and not to depart the court without leave; and thereupon the defendant Adolph Rudy Moder withdraws his motion for a new trial in the above-entitled case, and the case is referred to the probation officer.

42 Supreme Court of the District of Columbia

FRIDAY, JULY 15", A. D. 1932.

The court resumes its session pursuant to adjournment, Mr. Justice Letts presiding.

* * * * * * *

No. 49843.

Come as well the attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail and by his attorney Jesse C. Duke, Esquire; and thereupon it is considered by the court that the order of probation heretofore promulgated in this case, be and is hereby set aside and altogether held for naught, and it is ordered that a warrant of removal of said defendant to the penetentiary be issued, which is accordingly done, to which action of the court the defendant by his attorney prays an exception which is noted.

Motion for hearing (or rehearing)

Filed July 18, 1932

* * * * * * *

Now comes the defendant, Rocco Pellicano, by his counsel, and moves the court to grant him a hearing (or if the summary proceeding taken on Friday, July 15th, 1932, be considered a hearing, then to grant him a rehearing) before the revocation of his probation heretofore given to him by Hon. Peyton Gordon, the justice of this court sitting as trial justice in his said case, and the defendant says that he is similarly situated as James Caparrotta and adopts the same reasons as set forth in motion of that defendant
43 heretofore filed.

JESSE C. DUKE,
Counsel for Defendant.

To the UNITED STATES ATTORNEY:

You are hereby notified that the foregoing motion will be presented to the Justice of the Supreme Court of the District of Columbia, sitting in vacation, on Thursday, July 21st, 1932, at 10 a. m.

JESSE C. DUKE,
Counsel for Defendant.

Service of foregoing motion and notice accepted July 18th, 1932.

HAROLD W. ORCUTT,
Assistant U. S. Attorney, D. C

Supreme Court of the District of Columbia

THURSDAY, JULY 21", A. D. 1932.

The court resumes its session pursuant to adjournment, Mr. Justice Luhring presiding.

* * * * * * *

Come as well the attorney of the United States, as the defendant herein by his attorney Jesse C. Duke, Esquire, and thereupon the defendant's motion for a hearing (or a rehearing) on the revocation of probation, coming on to be heard, after argument by the counsel is by the court overruled, to which action of the court the defendant by his attorney prays an exception, which is noted;
44 whereupon the defendant by his attorney notes an appeal to the Court of Appeals of the District of Columbia, from the judgment of the Court in this case; and thereupon the Court fixes the amount of bond for costs on appeal at one hundred dollars or fifty dollars in cash.

Order in forma pauperis

Filed July 22, 1932

* * * * * * *

On reading and filing of affidavit of Rocco Pellicano, duly verified this 22nd day of July, 1932, it is

Ordered, that said Rocco Pellicano be and that he is hereby permitted to prosecute as a poor person, without being required to prepay fees or costs in this court, or give security therefor, his appeal to the Court of Appeals of the District of Columbia in the above-entitled cause.

O. R. LUHRING, *Justice.*

Assignment of errors

Filed July 25, 1932

* * * * * * *

The court erred:

1. In arbitrarily and summarily setting aside the order of probation without any warrant of arrest and without any charges being filed against the probationer and without any notice to probationer or his counsel and without any hearing being given probationer and without any opportunity to probationer to present his defense.

2. In that such arbitrary and summary procedure is in
45 violation of the United States Constitution in two particulars, in that due process of law, as required by the fifth amendment, was not followed by the said court, and probationer was not informed of the nature and cause of the accusation against him in violation of the sixth amendment.

3. In such arbitrary and summary revocation of probation without any notice or hearing, in violation of the statutory law on probation, as such law has been construed by the courts.

4. In such arbitrary and summary revocation of probation in violation of at least seven rules of the Supreme Court of the District of Columbia, or requirements thereof, in that there was no motion in writing, no such motion was duly filed, no such motion was duly calendared, no such motion was duly served on counsel, no notice whatever was given to probationer, the matter was not an emergency

one properly cognizable during vacation of the said court, and said court being in vacation this judge no longer had general or special jurisdiction over probationer nor did he have such jurisdiction because of any other case, because more than thirty days had elapsed after sentence in such other case, all as provided by the rules of said court.

5. In failure to grant hearing (or rehearing) upon prompt and immediate filing of motion therefor after such order had been entered without notice or hearing.

6. In other respects apparent of record.

JESSE C. DUKE,
Attorney for Appellant.

Service of copy of above acknowledged this 25th day of
46 July, 1932.

HAROLD W. ORCUTT,
Asst. U. S. Attorney.

Designation of record

Filed July 25, 1932

* * * * * * *

Now comes Rocco Pellicano, the appellant in the above-entitled cause, and designates the parts of the record which he desires to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. The order granting probation to defendant.
2. All minute entries since the date of said order.
3. Order setting aside order of probation.
4. Motion for hearing.
5. Memo.—Order overruling motion for hearing.
6. Memo.—Order noting appeal and fixing bond.
7. Order permitting appeal *in forma pauperis.*
8. Assignment of errors.
9. This designation of record.

JESSE C. DUKE,
Attorney for appellant.

Service of copy of above acknowledged this 25th day of July, 1932.

HAROLD W. ORCUTT,
Asst. U. S. Attorney.

47 *Appellee's additional designation of record*

Filed July 25, 1932

* * * * * * *

The clerk of the Supreme Court of the District of Columbia will please prepare, for the transcript of record on appeal herein, the following papers, memoranda and parts of the record, in addition

to those designated by the defendant (appellant) herein, Rocco Pelicaro, which the appellee herein deems necessary and material to be incorporated in said appeal, for the determination of the questions involved therein.

1. The indictment filed in said cause on September 30, 1930.

2. Memo.—Plea of not guilty withdrawn and plea of guilty entered on October 21, 1930.

3. Minute entry showing defendant (appellant herein) sentenced to penitentiary for four years first count, one hundred dollars second count; execution of sentence suspended and placed on probation, October 25, 1930. M 85, p. 391.

4. Minute entry showing order of court, July 15, 1932, revoking probation and ordering sentence of October 25, 1930, into effect and defendant (appellant herein) committed (by Justice F. Dickinson Letts). M 91, p. 10.

5. Certificate of probation officer of terms and conditions of said probation, dated October 25, 1930.

6. Copy of indictment filed in criminal cause No. 51368, on December 3, 1931, against this appellant and others (the conviction under which being the basis of the order of revocation of probation herein).

7. Memo. or partial minute entries showing commencement of trial of said indictment in criminal cause No. 51368, on
48 March 14, 1932, as to the defendant (appellant herein), and continuance of said trial from day to day before Justice F. Dickinson Letts and a jury, to March 31, 1932, inclusive.

8. Minute entry showing opening of court on March 31, 1932, and verdict of the jury returned in criminal cause No. 51368, on March 31, 1932, finding appellant herein guilty as charged (said conviction being the basis of the order of revocation of probation herein), Justice F. Dickinson Letts presiding. M. 86, p. 291.

9. Minute entry showing opening of court on April 15, 1932, and sentence of the court in criminal cause No. 51368, on April 15, 1932, against the defendant (appellant herein) upon said verdict, by Justice F. Dickinson Letts. M. 86, p. 312.

10. Minute entries showing that Justice F. Dickinson Letts presided at the trial of criminal cause No. 51368, and issued the order of July 15, 1932, herein revoking probation.

11. This additional designation.

LEO A. ROVER,
United States Attorney.
HAROLD W. ORCUTT,
Assistant United States Attorney.

July 25th, 1932: Copy of the foregoing additional designation of record was this day served upon Jesse C. Duke, Esquire, attorney for the appellant, Rocco Pelicaro, Colorado Building, Washington, D. C., by mailing a copy thereof to the said Jesse C. Duke, Colorado Building, Washington, D. C.

HAROLD W. ORCUTT,
Asst. U. S. Attorney.

49 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 48, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in the case of the United States vs. Rocco Pelicaro, criminal No. 49843, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24th day of September, 1932.

[SEAL.]

FRANK E. CUNNINGHAM, *Clerk.*
By CHAS. B. COFLIN, *Asst. Clerk.*

District of Columbia, Supreme Court

No. 5794

Rocco Pelicaro, Appellant, *vs.* United States

Court of Appeals, District of Columbia. Filed Sept. 26, 1932.

HENRY W. HODGES, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1932